

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW KELLER,

Plaintiff

V.

**ROBERT COLLINS; P. DAMITER;
LT. POPSON; A. KOVALCHIK;
and M. LORADY,**

Defendants

• • • • •

CIVIL NO. 1:11-CV-2222

(Judge Rambo)

(Magistrate Judge Mannion)

MEMORANDUM

Before the court is a January 3, 2012 report of the magistrate judge (doc. 12) to whom this matter was referred in which he recommends that Plaintiff's complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and that Plaintiff's motion for appointment of counsel (doc. 9) be dismissed as moot. The magistrate judge found that the complaint failed to allege a violation of Plaintiff's constitutional rights and that amendment would be futile as any amendment would not amount to a violation of Plaintiff's constitutional rights.

Objections to the report and recommendation were due fourteen (14) days after the filing of the report and recommendation. No objections were filed. On January 26, 2012, however, Plaintiff filed a motion for leave to file an amended complaint. He claims that the amended complaint would include more detailed factual allegations and legal theory.

Federal Rule of Civil Procedure 15(a)(2) requires the court to freely grant leave when justice requires. Rule 15 requires a motion to amend be made within 21 days. In the instant motion, Plaintiff did not request permission to file an amended complaint within the fourteen day objections period following the filing of the report

and recommendation. Indeed, the motion was filed beyond the 21 day window permitted by Rule 15. Middle District Local Rule 15.1 also requires that any such motion be accompanied by a proposed amended complaint. Plaintiff did not do so.

Plaintiff may argue that he does not have a copy of the local rules. He does, however, have a copy of the Standing Practice Order issued in this case (doc. 3) which is sent to all *pro se* plaintiffs. The practice order does require that document supporting allegations of fact that are relied on to support a motion be appended to a motion. Thus, Plaintiff has not complied with the rules.

The report and recommendation of the magistrate judge will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: February 1, 2012.

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(Judge Rambo)

(Magistrate Judge Mannion)

ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Mannion (doc. 12).
- 2) Plaintiff is granted leave to proceed *in forma pauperis*.
- 3) The complaint (doc. 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B).
- 4) Plaintiff's motion for appointment of counsel is deemed moot.
- 5) Plaintiff's motion to file an amended complaint (doc. 14) is denied without prejudice.

6) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.

7) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: February 1, 2012.